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7  
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9  
10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 SONIA PEREZ, individually, and on  
13 behalf of a class of similarly situated  
individuals,

14 Plaintiff,

15 v.

16 THE KROGER CO., an Ohio  
17 corporation; and DOES 1-10,  
inclusive,

18 Defendants.  
19  
20

Case No.: 2:17-cv-2448 ODW (AGRx)  
Hon. Otis D. Wright, II

**SECOND AMENDED CLASS  
ACTION COMPLAINT FOR:**

- (1) Violations of Unfair Competition  
Law, California Business &  
Professions Code § 17200 *et seq.*  
(2) Violations of False Advertising  
Law, California Business &  
Professions Code § 17500  
(3) Violations of California's  
Consumers Legal Remedies Act

**DEMAND FOR JURY TRIAL**

## INTRODUCTION

1. Plaintiff Sonia Perez (“Plaintiff”) brings this action for herself and on behalf of all persons in the United States who purchased one or more containers of Kroger 100% Apple Juice, Kroger 100% Natural Apple Juice, and Simple Truth Organic 100% Apple Juice with the phrase “No Sugar Added” on the front label or front outer packaging (collectively, “Kroger Apple Juice”) created, manufactured, distributed, marketed, and/or sold by The Kroger Co. and DOES 1-10 (“Defendants” or “Kroger”).

2. Plaintiff’s action arises out of the unlawful “No Sugar Added” statements placed by Defendants on the front labels and front outer packaging of the Kroger Apple Juice. The Food and Drug Administration (“FDA”) regulations promulgated pursuant to the Food, Drug, and Cosmetics Act of 1938 (“FDCA”) specify the precise nutrient content claims concerning sugar that may be made on a food label. *See* 21 C.F.R. § 101, Subpart D. Defendants’ “No Sugar Added” claims on their Kroger Apple Juice containers fail to comply with these requirements, as set forth below. As a result, Defendants have violated California’s Sherman Law and consumer protection statutes, which wholly adopt the federal requirements.

3. In the United States, more than one-third of adults are obese, and approximately seventeen percent of children and adolescents are obese. The obesity epidemic has been fueled, in part, by increased consumption of foods high in sugar. Obesity and excess sugar consumption, in turn, have been linked to a variety of health problems, including, but not limited to, heart disease, tooth decay and diabetes. As a result, consumers are increasingly aware of their sugar consumption and attach importance to the statement “No Sugar Added” on the labels of food products.

4. To profit from consumers’ well-placed and increased focus on

1 minimizing sugar consumption, Defendants have prominently featured a “No  
2 Sugar Added” statement on the front label and front outer packaging of their  
3 Kroger Apple Juice containers. The images below depict the “No Sugar Added”  
4 statement as featured on the labels (“No Sugar Added Label”):









1           5. Defendants' prominent "No Sugar Added" statement on the front  
 2 label and front outer packaging of their Kroger Apple Juice containers violates  
 3 FDA regulations. The FDA forbids the use of the terms "No Added Sugar," "No  
 4 Sugar Added" and "Without Added Sugar" on food product labels unless the  
 5 product making such claims meet the following criteria:

6           (i) No amount of sugars, as defined in 101.9(c)(6)(ii), or any other  
 7 ingredient that contains sugars that functionally substitute for added sugars  
 8 is added during processing or packaging; and

9           (ii) The product does not contain an ingredient containing added  
 10 sugars such as jam, jelly, or concentrated fruit juice; and

11           (iii) The sugars content has not been increased above the amount  
 12 present in the ingredients by some means such as the use of enzymes,  
 13 except where the intended functional effect of the process is not to  
 14 increase the sugars content of a food, and a functionally insignificant  
 15 increase in sugars results; and

16           (iv) **The food that it resembles and for which it substitutes**  
 17 **normally contains added sugars; and**

18           (v) The product bears a statement that the food is not "low calorie"  
 19 or "calorie reduced" (unless the food meets the requirements for a "low"  
 20 or "reduced calorie" food) and that directs consumers' attention to the  
 21 nutrition panel for further information on sugar and calorie content.<sup>1</sup>

22           6. Further, the FDA has stated that, "[i]n implementing the guidelines,  
 23 the purpose of the 'no added sugar' claim is to present consumers with  
 24 information that allows them to differentiate between similar foods that would  
 25 normally be expected to contain added sugars, with respect to the presence or  
 26 absence of added sugars. Therefore, the 'no added sugar' claim is not

27  
 28 <sup>1</sup> See 21 C.F.R. § 101.60(c)(2)(emphasis added).

1 appropriate to describe foods that do not normally contain added sugars.”

2 7. Thus, Defendants’ “No Sugar Added” claims on Kroger Apple Juice  
3 are in violation of FDA and state regulations because Kroger Apple Juice does  
4 not resemble and substitute for a food that normally contains added sugars,  
5 including, without limitation, apple juice (21 C.F.R. § 101.60(c)(iv)).

6 8. As a result of their reliance on Defendants’ unlawful sugar-content  
7 labeling claims, Plaintiff and Class Members have suffered an ascertainable loss  
8 of money, including, but not limited to, out of pocket costs incurred in  
9 purchasing the Kroger Apple Juice. Further, as a result of their deceptive  
10 marketing and unfair competition with other similar manufacturers and brands,  
11 Kroger Apple Juice realized sizable profits.

12 9. Defendants’ “No Sugar Added” statement on the front label and  
13 front outer packaging of the Kroger Apple Juice containers, although literally  
14 true, is likely to deceive reasonable consumers in its implications.

15 10. Class Members are exposed to the front labels and front outer  
16 packaging of Kroger Apple Juice containers where the “No Sugar Added”  
17 statement is prominently displayed.

18 11. Class Members are also exposed to the front labels and front outer  
19 packaging of competing brands of apple juice that do not display a “No Sugar  
20 Added” statement. These include Martinelli’s Gold Medal 100% Apple Juice,  
21 Tree Top 100% Apple Juice, Santa Cruz Organic Apple Juice, L&A Organic  
22 Apple Juice and Langer’s Apple Juice.

23 12. Class Members scan the front labels and front outer packaging of  
24 competing brands of apple juice for information about the products. Class  
25 Members are not expected to look beyond representations on the front of  
26 competing brands of apple juice to discover the truth about the representations.

27 13. The prominent placement of the No Sugar Added statement on the  
28

1 front labels and front outer packaging of Kroger Apple Juice containers is likely  
2 to deceive Class Members because it implies that Kroger Apple Juice is different  
3 and better than the competing brands of apple juice. Specifically, the “No Sugar  
4 Added” claim on Kroger Apple Juice containers is likely to deceive Class  
5 Members because it implies that other brands of apple juice that do not have a  
6 “No Sugar Added” claim do contain added sugar. In fact, other brands of apple  
7 juice do not contain added sugar.

8 14. In addition, the “No Sugar Added” claim on Kroger Apple Juice  
9 containers is likely to deceive Class Members because it implies that Kroger  
10 Apple Juice does not have a lot of the sugar that many health-conscious  
11 consumers avoid, and is therefore healthier. In fact, Kroger Apple Juice, like  
12 other brands of apple juice, has high sugar content.

13 15. As a result of their reliance on Defendants’ deceptive sugar-content  
14 labeling claims, Plaintiff and Class Members have suffered an ascertainable loss  
15 of money, including, but not limited to, out of pocket costs incurred in  
16 purchasing the Kroger Apple Juice. Further, as a result of their deceptive  
17 marketing and unfair competition with other similar manufacturers and brands,  
18 Kroger Apple Juice realized sizable profits.

19 **PARTIES**

20 **PLAINTIFF SONIA PEREZ**

21 16. Plaintiff SONIA PEREZ is a citizen and resident of the State of  
22 California, County of Los Angeles. In January 2017, Plaintiff went to a Ralphs  
23 market to purchase apple juice, milk and other groceries. She went to the aisle  
24 containing apple juice and observed a variety of apple juices, some of which had  
25 “No Added Sugar” statements on their front labels and some of which did not.  
26 Plaintiff noticed that Kroger 100% Apple Juice (pictured above with a single  
27 large apple on the front label) stated “No Sugar Added” on the front label.



1 Martinelli's Apple Juice, which was next to it on the shelf, did not. Langer's  
2 Apple Juice also did not state "No Sugar Added" on the front label. Plaintiff  
3 only looked at the front labels of the apple juices. The "No Sugar Added"  
4 statement influenced Plaintiff to purchase Kroger 100% Apple Juice (pictured  
5 above with a single large apple on the front label).

6 17. The "No Sugar Added" statement on the front label of Kroger Apple  
7 Juice and the absence of a "No Sugar Added" statement on the front label of  
8 Martinelli's Apple Juice (which was next to it on the shelf) and Langer's Apple  
9 Juice deceived Plaintiff because it suggested to her that Kroger Apple Juice is  
10 different and better than the competing brands of apple juice because they  
11 (presumably) contain added sugar. Had she known that similar apple juice  
12 products contained approximately the same level of sugars, and that none of  
13 them contain added sugars, she would not have bought Kroger Apple Juice.

14 18. In addition, the "No Sugar Added" claim on the front label of  
15 Kroger Apple Juice deceived Plaintiff because it suggested to her that it did not  
16 contain a lot of sugar and was therefore healthier. Plaintiff reasonably relied on  
17 Defendants' "No Sugar Added" claim in deciding to purchase the Kroger Apple  
18 Juice and Defendants' "No Sugar Added" claims were important to Plaintiff in  
19 making her purchase decision. Sugar level is very important to Plaintiff and she  
20 tries to be aware of it in foods she buys. In fact, Kroger Apple Juice, like other  
21 brands of apple juice, has high sugar content.

22 19. Plaintiff intends to purchase Kroger Apple Juice again if the No  
23 Sugar Added claim is removed because the label would then be truthful and not  
24 misleading.

25 20. If the Kroger Apple Juice had not included the illegal and deceptive  
26 "No Sugar Added" claim on the label, Plaintiff would not have purchased the  
27 Kroger Apple Juice or would have paid less for it.

28

1 **DEFENDANTS**

2 21. Defendant THE KROGER CO. is an Ohio corporation, organized  
3 and existing under the laws of the State of Ohio and registered to conduct  
4 business in California. Defendant THE KROGER CO.'s Corporate Headquarters  
5 are located at 1014 Vine Street, Cincinnati, OH 45202.

6 22. Plaintiff is informed and believes, and thereon alleges, that DOES 1  
7 through 10 are the successors, predecessors, parent companies, subsidiaries,  
8 affiliates, divisions, or related entities to which these allegations pertain.

9 23. Plaintiff is informed and believes, and thereon alleges, that each and  
10 all of the acts and omissions alleged herein was performed by, or is attributable  
11 to THE KROGER CO. and DOES 1-10, each acting as the agent for the other,  
12 with legal authority to act on the other's behalf. The acts of any and all  
13 Defendants were in accordance with, and represent, the official policy of  
14 Defendants.

15 24. Plaintiff is informed and believes, and thereon alleges, that each of  
16 said Defendants is in some manner intentionally, negligently, or otherwise  
17 responsible for the acts, omissions, occurrences, and transactions of each and all  
18 of the other Defendants in proximately causing the damages herein alleged.

19 25. At all relevant times, Defendants, and each of them, ratified each  
20 and every act or omission complained of herein.

21 **JURISDICTION**

22 26. This case was removed to federal court on March 29, 2017. (Dkt.  
23 No. 1.) Defendant alleges: "The action is removable pursuant to the Class  
24 Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1332(d) and 1453(b)  
25 because this case is (1) a proposed class action within the meaning of CAFA, in  
26 which (2) "any member of a class of plaintiffs is a citizen of a State different  
27 from any defendant," (3) the "number of members of all proposed plaintiff  
28

1 classes in the aggregate is [not] less than 100,” (4) “the matter in controversy  
2 exceeds the sum or value of \$5,000,000, exclusive of interest and costs,” and (5)  
3 no CAFA exclusions apply. *See* 28 U.S.C. § 1332(d)(2), (d)(5)(B).”

#### 4 **VENUE**

5 27. Kroger, through its business of advertising, distributing, and selling  
6 the Kroger Apple Juice, has established sufficient contacts in this district such  
7 that personal jurisdiction is appropriate. Defendant is deemed to reside in this  
8 district pursuant to 28 U.S.C. § 1391(a).

#### 9 **FACTUAL ALLEGATIONS**

10 28. Due to health concerns, U.S. consumers are increasingly more aware  
11 of their sugar consumption and, as such, attach great importance to “No Sugar  
12 Added” and other sugar-content claims on food and beverage product labeling.

13 29. To profit from consumers’ well-placed and increased focus on  
14 minimizing sugar consumption, Defendants have prominently featured a “No  
15 Sugar Added” claim on the front label of their Kroger Apple Juice packaging, as  
16 depicted above.

17 30. However, the FDA forbids the use of “No Sugar Added” claims  
18 unless the product making such claim meets the following criteria:

19 (i) No amount of sugars, as defined in 101.9(c)(6)(ii), or any other  
20 ingredient that contains sugars that functionally substitute for added sugars  
21 is added during processing or packaging; and

22 (ii) The product does not contain an ingredient containing added  
23 sugars such as jam, jelly, or concentrated fruit juice; and

24 (iii) The sugars content has not been increased above the amount  
25 present in the ingredients by some means such as the use of enzymes,  
26 except where the intended functional effect of the process is not to  
27 increase the sugars content of a food, and a functionally insignificant  
28

1 increase in sugars results; and

2 (iv) **The food that it resembles and for which it substitutes**  
 3 **normally contains added sugars; and**

4 (v) The product bears a statement that the food is not "low calorie"  
 5 or "calorie reduced" (unless the food meets the requirements for a "low" or  
 6 "reduced calorie" food) and that directs consumers' attention to the  
 7 nutrition panel for further information on sugar and calorie content.

8 31. Further, the FDA has stated that, "[i]n implementing the guidelines,  
 9 the purpose of the 'no added sugar' claim is to present consumers with  
 10 information that allows them to differentiate between similar foods that would  
 11 normally be expected to contain added sugars, with respect to the presence or  
 12 absence of added sugars. Therefore, the 'no added sugar' claim is not  
 13 appropriate to describe foods that do not normally contain added sugars."<sup>2</sup>

14 32. Thus, Defendants' "No Sugar Added" claims on Kroger Apple Juice  
 15 are in violation of FDA and state regulations because Kroger Apple Juice does  
 16 not resemble and substitute for a food that normally contains added sugars,  
 17 including, without limitation, apple juice (21 C.F.R. § 101.60(c)(iv)).

18 33. As a result of their reliance on Defendants' unlawful sugar-content  
 19 labeling claims, consumers have suffered an ascertainable loss of money,  
 20 including, but not limited to, out of pocket costs incurred in purchasing the  
 21 Kroger Apple Juice. Further, as a result of their deceptive marketing and unfair  
 22 competition with other similar manufacturers and brands, Defendants realized  
 23 sizable profits.

## 24 **CLASS ACTION ALLEGATIONS**

25 34. Plaintiff brings this lawsuit as a class action on behalf of herself and  
 26 all others similarly situated as members of the proposed Class pursuant to

27  
 28 <sup>2</sup> 58 Fed. Reg. 2302, 2366 (Jan. 6, 1993)

1 California Code of Civil Procedure § 382.

2 35. All claims alleged herein arise under California law for which  
3 Plaintiffs seek relief authorized by California law.

4 36. The class and sub-classes Plaintiff seeks to represent (the “Class  
5 Members”) is defined as:

6 **Nationwide Class:** All individuals in the United  
7 States who purchased one or more containers of Kroger  
8 Apple Juice containing a “No Sugar Added” claim on  
9 the label or other packaging at any time between four  
10 years prior to the filing of this complaint until the date  
11 of certification (the “Nationwide Class”).

12 **California Sub-Class:** All members of the Nationwide  
13 Class who reside in the State of California (the  
14 “California Sub-Class”).

15 **CLRA Sub-Class:** All members of the California Sub-  
16 Class who are “consumers” within the meaning of  
17 California Civil Code § 1761(d) (the “CLRA Sub-  
18 Class”).

19 37. Excluded from the Class are: (1) Defendants, any entity or division  
20 in which Defendants have a controlling interest, and their legal representatives,  
21 officers, directors, assigns, and successors; (2) the Judge to whom this case is  
22 assigned and the Judge’s staff; (3) any Judge sitting in the presiding state and/or  
23 federal court system who may hear an appeal of any judgment entered; and (4)  
24 those persons who have suffered personal injuries as a result of the facts alleged  
25 herein. Plaintiff reserves the right to amend the Class and Sub-Class definitions  
26 if discovery and further investigation reveal that the Class or Sub-Class should  
27 be expanded or otherwise modified.

28 38. There is a well-defined community of interest in the litigation and  
the Class is readily ascertainable.

39. Numerosity: Although the exact number of prospective Class



Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. The Class Members are readily identifiable from information and records in Defendants' possession, custody, or control.

40. Typicality: Plaintiff's claims are typical of the claims of the Class in that Plaintiff, like all Class Members, has purchased one or more Kroger Apple Juice products containing a "No Sugar Added" claim on the label or other packaging within the applicable class period. The representative Plaintiff, like all Class Members, has been damaged by Defendants' misconduct in that they have incurred expenses due to their reliance on Defendants' labeling of its Kroger Apple Juice product, as described throughout this complaint. Furthermore, the factual bases of Defendants' misconduct are common to all Class Members and represent a common thread resulting in injury to all Class Members.

41. Commonality: There are numerous questions of law and fact common to Plaintiff and the Class that predominate over any question affecting only individual Class Members. These common legal and factual issues include the following:

- (a) Whether Defendants engaged in unlawful, unfair or deceptive business practices by failing to properly package and label food products sold to consumers;
- (b) Whether the food products at issue were misbranded as a matter of law;
- (c) Whether Defendants unlawfully labeled certain food and beverage products with "No Sugar Added" claims;

- (d) Whether Defendants made false, misleading and/or untrue statements via their product labeling;
- (e) Whether Defendants violated California's Consumers Legal Remedies Act (Cal. Civil Code §§ 1750 *et seq.*);
- (f) Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.*;
- (g) Whether Defendants violated California Business & Professions Code §§ 17500 *et seq.*;
- (h) Whether Defendants violated the Sherman Food, Drug, and Cosmetic Law (Health & Saf. Code, §§ 109875 *et seq.*);
- (i) Whether Plaintiff and the Class are entitled to equitable and/or injunctive relief;
- (j) Whether Plaintiff and other Class Members are entitled to damages;
- (k) Whether Defendants' unlawful, unfair and/or deceptive practices harmed Plaintiff and the Class;
- (l) Whether Defendants knew or reasonably should have known of the deceptive labeling claims relating to the Kroger Apple Juice product; and
- (m) Whether Defendants are obligated to inform Class Members of their right to seek reimbursement for having paid for Kroger Apple Juice in reliance on Defendants' misrepresentations.

42. Adequate Representation: Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff has retained attorneys experienced in the prosecution of class actions, including consumer and product defect class actions, and Plaintiff intends to prosecute this action vigorously.

43. Superiority: Plaintiff and the prospective Class Members have all suffered and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Members' claims, it is likely that only a few Class Members could afford to seek legal redress for Defendants' misconduct. Absent a class action, Class Members will continue to incur damages, and Defendants' misconduct will continue without remedy. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

### **FIRST CAUSE OF ACTION**

#### **(Violation of California Business & Professions Code § 17200 *et seq.*)**

44. Plaintiff brings this cause of action on behalf of herself and on behalf of the Nationwide Class, or in the alternative, on behalf of herself and on behalf of the California Sub-Class.

45. As a result of their reliance on Defendants' misrepresentations and omissions, Class Members suffered an ascertainable loss of money, property, and/or value of their Kroger Apple Juice products.

46. California Business & Professions Code § 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising."

47. Defendants' "No Sugar Added" claims on Kroger Apple Juice are in violation of FDA and state regulations because Kroger Apple Juice does not

1 resemble and substitute for a food that normally contains added sugars (21  
2 C.F.R. § 101.60(c)(iv)).

3 48. 21 C.F.R. § 101.13(d) provides: “A ‘substitute’ food is one that  
4 may be used interchangeably with another food that it resembles, i.e., that it is  
5 organoleptically, physically, and functionally (including shelf life) similar to,  
6 and that it is not nutritionally inferior to unless it is labeled as an ‘imitation.’”

7 49. As an example, the FDA states that the food “‘no salt added’ canned  
8 corn” resembles and for which it substitutes is “canned corn,” not frozen corn.<sup>3</sup>  
9 The FDA has explained: “In implementing the guidelines, the purpose of the ‘no  
10 added sugar’ claim is to present consumers with information that allows them to  
11 differentiate between similar foods that would normally be expected to contain  
12 added sugars, with respect to the presence or absence of added sugars.  
13 Therefore, the ‘no added sugar’ claim is not appropriate to describe foods that do  
14 not normally contain added sugars.”<sup>4</sup> The FDA goes on to cite fruit juices as an  
15 example of a food group for which “no sugar added” claims are inappropriate  
16 due to their “substantial inherent sugar content.” *Id.*

17 50. The food that Kroger Apple Juice resembles and substitutes for is  
18 100% apple juice from concentrate.

19 51. 100% apple juice from concentrate does not normally contain added  
20 sugars.

21 52. There is no food that Kroger Apple Juice resembles and substitutes  
22 for that normally contains added sugars.

23 53. Defendants’ acts, conduct and practices were also unlawful, in that  
24 they constituted:

25 (a) Violations of the Federal Food, Drug, and Cosmetics Act;

26 <sup>3</sup> 58 Fed. Reg. at 2325; *see also* 56 Fed. Reg. 60421, 60432 (Nov. 27,  
27 1991) (stating that “sodium free Italian bread” is a substitute for Italian bread).

28 <sup>4</sup> 58 Fed. Reg. 2302, 2327 (Jan. 6, 1993).

1 (b) Violations of California’s Consumers Legal Remedies Act;

2 (c) Violations of California’s False Advertising Law; and

3 (d) Violations of California’s Sherman Law;

4 54. Defendants’ “No Sugar Added” statement on the front label and  
5 front outer packaging of their Kroger Apple Juice containers, although literally  
6 true, is likely to deceive reasonable consumers in its implications.

7 55. Consumers are exposed to the front labels and front outer packaging  
8 of Kroger Apple Juice containers where the “No Sugar Added” statement is  
9 prominently displayed.

10 56. Consumers are also exposed to the front labels and front outer  
11 packaging of competing brands of apple juice that do not display a “No Sugar  
12 Added” statement. These include Martinelli’s Gold Medal 100% Apple Juice,  
13 Tree Top 100% Apple Juice, Santa Cruz Organic Apple Juice, L&A Organic  
14 Apple Juice and Langer’s Apple Juice.

15 57. Consumers scan the front labels and front outer packaging of  
16 competing brands of apple juice for information about the products. Reasonable  
17 consumers are not expected to look beyond representations on the front of  
18 competing brands of apple juice to discover the truth about the representations.

19 58. The prominent placement of the No Sugar Added statement on the  
20 front labels and front outer packaging of Kroger Apple Juice containers is likely  
21 to deceive reasonable consumers because it implies that Kroger Apple Juice is  
22 different and better than the competing brands of apple juice. Specifically, the  
23 “No Sugar Added” claim on Kroger Apple Juice containers is likely to deceive  
24 reasonable consumers because it implies that other brands of apple juice that do  
25 not have a “No Sugar Added” claim do contain added sugar. In fact, other  
26 brands of apple juice do not contain added sugar.

27 59. In addition, the “No Sugar Added” claim on Kroger Apple Juice  
28



1 containers is likely to deceive reasonable consumers because it implies that  
2 Kroger Apple Juice does not have a lot of the sugar that many health-conscious  
3 consumers avoid and is therefore healthier. In fact, Kroger Apple Juice, like  
4 other brands of apple juice, has high sugar content.

5 60. Defendants' use of the "No Sugar Added" claim, as set forth herein,  
6 also constitutes an "unfair" business act or practice within the meaning of  
7 California Business and Professions Code §§ 17200 *et seq.*, because any utility  
8 for Defendants' conduct is outweighed by the gravity of the consequences to  
9 Plaintiff and Class Members and because the conduct offends public policy. As  
10 discussed above, the overconsumption of sugar has been associated with a  
11 variety of health problems, many of which can cause serious complications or  
12 death, including, but not limited to, heart disease, tooth decay, diabetes, and  
13 cancer. Deceptive practices of the type upon which Plaintiffs' claims contribute  
14 to the overconsumption of sugars and are thereby directly linked to these grave  
15 social ills.

16 61. If the Kroger Apple Juice had not included the illegal and deceptive  
17 "No Sugar Added" claim on the label, Plaintiff and Class Members would not  
18 have purchased the Kroger Apple Juice or would have paid less for it.

19 62. By their conduct, Defendants have engaged in unfair competition  
20 and unlawful, unfair, and fraudulent business practices.

21 63. Defendants' illegal, deceptive and unfair business acts or practices  
22 occurred repeatedly in Defendants' trade or business, and were capable of  
23 deceiving a substantial portion of the purchasing public.

24 64. As a direct and proximate result of Defendants' illegal, deceptive  
25 and unfair business acts or practices Plaintiff and the Class have suffered and  
26 will continue to suffer actual damages.

27 65. Defendants have been unjustly enriched and should be required to  
28

1 make restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the  
2 Business & Professions Code.

3 **SECOND CAUSE OF ACTION**

4 **(Violation of California Business & Professions Code § 17500 *et seq.*)**

5 66. Plaintiff incorporates by reference the allegations contained in each  
6 and every paragraph of this Complaint.

7 67. Plaintiff brings this cause of action on behalf of herself and on  
8 behalf of the Nationwide Class, or in the alternative, on behalf of the California  
9 Sub-Class.

10 68. California Business & Professions Code § 17500 prohibits unfair,  
11 deceptive, untrue, and misleading advertising in connection with the disposal of  
12 personal property (among other things), including, without limitation, false  
13 statements as to the use, worth, benefits, or characteristics of the property.

14 69. Defendants have committed acts of misleading and unlawful  
15 advertising by utilizing “No Sugar Added” claims on the labels of the Kroger  
16 Apple Juice. In addition, Defendants made such unlawful or misleading labeling  
17 claims with the intent to dispose of said merchandise.

18 70. Defendants knew, or in the exercise of reasonable care should have  
19 known, that the “No Sugar Added” representations were misleading and  
20 deceptive.

21 71. The falsely advertised Kroger Apple Juice was, and continues to be,  
22 likely to deceive members of the public.

23 72. As a result of their reliance on Defendants’ misrepresentations and  
24 omissions, Class Members suffered an ascertainable loss of money, property,  
25 and/or value of their Kroger Apple Juice.

26 73. As a direct and proximate result of Defendants’ unfair and deceptive  
27 practices, Plaintiff and the Class have suffered and will continue to suffer actual  
28

1 damages.

2 74. Defendants have been unjustly enriched and should be required to  
3 make restitution to Plaintiff and the Class. Pursuant to § 17535 of the Business  
4 & Professions Code, Plaintiff and Class Members are entitled to an order of this  
5 Court enjoining such future conduct on the part of Defendants and such other  
6 orders and judgments which may be necessary to disgorge Defendants' ill-gotten  
7 gains and restore to any person in interest any money paid for its Kroger Apple  
8 Juice as a result of the wrongful conduct of Defendants.

9 **THIRD CAUSE OF ACTION**

10 **(Violation of California's Consumers Legal Remedies Act, California Civil**  
11 **Code § 1750, *et seq.*)**

12 75. Plaintiff re-alleges and incorporates by reference each and every  
13 allegation contained in the preceding paragraphs of this Complaint as though  
14 fully set forth herein.

15 76. Plaintiff brings this cause of action on behalf of herself and on  
16 behalf of the members of the CLRA Sub-Class.

17 77. Defendants are "person(s)" as defined by California Civil Code §  
18 1761(c).

19 78. Plaintiff and CLRA Sub-Class Members are "consumers" within the  
20 meaning of California Civil Code § 1761(d) because they bought the Kroger  
21 Apple Juice for personal, family, or household purposes.

22 79. By failing to disclose and concealing the true and actual nature of  
23 the Kroger Apple Juice from Plaintiff and prospective Class Members,  
24 Defendants violated California Civil Code § 1770(a), as it represented that the  
25 Kroger Apple Juice had characteristics and benefits that it does not have,  
26 represented that the Kroger Apple Juice was of a particular standard, quality, or  
27 grade when it was of another, and advertised the Kroger Apple Juice with the  
28

1 intent not to sell it as advertised. *See* Cal. Civ. Code §§ 1770(a)(5)(7) & (9).

2 80. Defendants' unfair and deceptive acts or practices occurred  
3 repeatedly in Defendants' trade or business and were capable of deceiving a  
4 substantial portion of the purchasing public.

5 81. Defendants knew the Kroger Apple Juice did not possess the  
6 characteristics and benefits as represented and were not of the particular  
7 standard, quality or grade as represented.

8 82. As a result of their reliance on Defendants' representations and  
9 omissions, Class Members suffered an ascertainable loss of money, property,  
10 and/or value of their Kroger Apple Juice.

11 83. In failing to disclose and misrepresenting the true nature and  
12 contents of the Kroger Apple Juice, Defendants knowingly and intentionally  
13 concealed material facts and breached their duty not to do so.

14 84. The facts Defendants concealed from or misrepresented to Plaintiff  
15 and Class Members are material in that a reasonable consumer would have  
16 considered them to be important in deciding whether to purchase the Kroger  
17 Apple Juice or pay less. If the Kroger Apple Juice had not included the illegal  
18 and deceptive "No Sugar Added" claim on the label, Plaintiff and Class  
19 Members would not have purchased the Kroger Apple Juice or would have paid  
20 less for it.

21 85. Plaintiff and Class Members are reasonable consumers who expect  
22 manufacturers, like Defendants, to provide accurate and truthful representations  
23 regarding the sugar content contained in their products, especially as compared  
24 to those in competitors' similar products. Further, reasonable consumers, like  
25 Plaintiff, rely on the representations made by manufacturers regarding products'  
26 sugar content in determining whether to purchase the particular products and  
27 consider that information important to their purchase decision.

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- 1 (e) A declaration that Defendants must disgorge, for the benefit  
2 of the Class, all or part of the ill-gotten profits they received  
3 from the sale of the Kroger Apple Juice products, or make full  
4 restitution to Plaintiff and Class Members;
- 5 (f) An award of attorneys' fees and costs, as allowed by law;
- 6 (g) An award of attorneys' fees and costs pursuant to California  
7 Code of Civil Procedure § 1021.5;
- 8 (h) An award of pre-judgment and post-judgment interest, as  
9 provided by law;
- 10 (i) Leave to amend the Complaint to conform to the evidence  
11 produced at trial; and
- 12 (j) Such other relief as may be appropriate under the  
13 circumstances.

14 **DEMAND FOR JURY TRIAL**

15 90. Plaintiff demands a trial by jury of any and all issues in this action  
16 so triable.

17 Dated: September 8, 2017

18 Respectfully submitted,  
19 Capstone Law APC

20 By: /s/ Robert K. Friedl

21 Bevin A. Pike  
22 Robert K. Friedl  
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24 Attorneys for Plaintiff Sonia Perez  
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